



ITW

Patent

Attorney's Docket No. 1034136-000035

UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of

Zhongxin GE et al.

Application No.: 10/594,432

Filed: September 26, 2006

For: PEGYLATION AND
HYDROXYLATION OF
TRIMETALLIC NITRIDE
ENDOHEDRAL
METALLOFULLERENES

) **MAIL STOP: PCT**
)
) Group Art Unit: Unassigned
)
) Examiner: Unassigned
)
) Confirmation No.: 2929
)
)
)
)
)
)

RENEWED PETITION UNDER 37 C.F.R. § 1.47(a)

Mail Stop: PCT
Office of PCT Legal Administration
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In Response to the Decision on Petition issued on December 11, 2007 in the above-identified application (hereinafter, the "Decision"), Applicants hereby respectfully request reconsideration on the merits of the Petition for Filing Application By Less Than All the Inventors Pursuant to 37 C.F.R. § 1.47(a).

As described previously, the joint inventors of this application are Zhongxin Ge, J. Paige Phillips, and Harry C. Dorn. It is requested that the inventors Zhongxin Ge and J. Paige Phillips be permitted to make a declaration of inventorship in connection with the above identified U.S. patent application on behalf of Harry C. Dorn. Joint inventor Harry C. Dorn has refused to sign the Declaration. The other inventors, Zhongxin Ge and J. Paige Phillips, have signed the Declaration and a

copy of the partially executed Declaration was previously submitted to the U.S. Patent and Trademark Office on November 16, 2007.

A Statement of Facts Under 37 C.F.R. § 1.47(a), executed by Mr. Aaron S. Hullman, was submitted on November 16, 2007 with the Petition for Filing Application By Less Than All the Inventors Pursuant to 37 C.F.R. § 1.47(a). The Decision notes that the documentary evidence to support Mr. Hullman's declaration, in particular Exhibits 1-4, were missing. Accordingly, attached hereto is a complete copy of Mr. Hullman's declaration, *i.e.*, Statement of Facts Under 37 C.F.R. § 1.47(a) with Exhibits 1-4 attached. The Statement of Facts, including Exhibits 1-4, provide documentary evidence that Mr. Hullman sent to David O. Williamson, Esq. (Dr. Dorn's attorney) a complete copy of the as-filed application, which includes the specification, claims, and drawings, as well as a copy of the Combined Declaration and Power of Attorney document for execution. Despite reasonable efforts to have Dr. Dorn execute the above-identified Declaration, Dr. Dorn has not returned the executed Declaration and the comments and conduct of his attorney, Mr. Williamson, constitute a refusal of Dr. Dorn to execute the Declaration (as evidenced by a failure to return an executed Declaration).

Also attached hereto is a Second Statement of Facts Under 37 C.F.R. § 1.47(a) with Exhibits A-B. This Second Statement of Facts, signed by Mr. Hullman, provides copies of the confirmation of receipt materials for the two letters sent to Mr. Williamson -- (1) certified mail receipt for the May 11, 2007 letter sent to Mr. Williamson enclosing a copy of the application as well as a Declaration for execution by Dr. Dorn; and (2) Federal Express shipment delivery information for the July 16, 2007 letter that was sent to Mr. Williamson enclosing a duplicate package as was

sent on May 11, 2007. This Second Statement of Facts also indicates that Mr. Williamson represents Dr. Dorn for matters regarding Luna Innovations Incorporated (assignee of the above-captioned application). Such representation of Dr. Dorn, by Mr. Williamson, includes intellectual property matters and such intellectual property matters include the subject patent application.

Based upon a telephone discussion on December 18, 2007 between applicants' undersigned representative and Mr. Anthony Smith, Attorney-Advisor, Office PCT Legal Administration, it is believed that the enclosed materials are sufficient to satisfy the requirements of 37 C.F.R. § 1.47(a) and this Renewed Petition should therefore be granted.

Pursuant to the Decision, the Petition fee was submitted on November 16, 2007, and thus is not required at this time. However, the Commissioner is hereby authorized to charge any fee necessary by this submission to Deposit Account No. 02-4800. This paper is submitted in duplicate.

Any questions regarding this Petition should be directed to the undersigned at the telephone number set forth below.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY PC

Date: January 2, 2008

By: 

Susan M. Dadio

Registration No. 40,373

P.O. Box 1404
Alexandria, Virginia 22313-1404
(703) 836-6620



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of)	
Zhongxin GE et al.)	Group Art Unit: Unassigned
Application No.: 10/594,432)	Examiner: Unassigned
Filed: September 26, 2006)	Confirmation No.: Unassigned
For: PEGYLATION AND)	
HYDROXYLATION OF)	
TRIMETALLIC NITRIDE)	
ENDOHEDRAL)	
METALLOFULLERENES)	

STATEMENT OF FACTS UNDER 37 C.F.R. §1.47(a)

Mail Stop Missing Parts
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

I, Aaron S. Hullman, hereby declare as follows:

1. I am currently an attorney with the law firm of Latham & Watkins, LLP.

From October 2005 to August 2007, I was Vice President and General Counsel of Luna Innovations Incorporated. Luna Innovations Incorporated is the assignee of the above-captioned application. As Vice President and General Counsel, I was an authorized representative of Luna Innovations Incorporated.

2. Harry C. Dorn, Ph.D., a named inventor of the above-captioned patent application, was employed by Luna Innovations Incorporated during the time of his contribution to the invention described and claimed in the above-captioned application.

3. Dr. Dorn is no longer employed by Luna Innovations Incorporated.

4. Dr. Dorn is represented by an attorney with respect to certain matters concerning Luna Innovations Incorporated. Therefore, subsequent to filing the

above-captioned application, a letter was prepared and a copy of the application (specification, drawings, claims and Declaration) was sent on November 14, 2006 to Dr. Dorn through his attorney at that time, John P. Fishwick, Jr., at Lichtenstein Fishwick & Johnson PLC, Liberty Trust Building, 101 S. Jefferson Street, Suite 400, Roanoke, Virginia 24011. Exhibit 1.

5. On January 8, 2007 I received a letter from Mr. Fishwick, Jr. indicating that all future correspondence to Dr. Dorn should now be sent to his newly appointed counsel, Mr. David O. Williamson. Exhibit 2.

6. On May 11, 2007, I prepared and sent a certified letter to Dr. Dorn, through his newly appointed counsel, Mr. David O. Williamson, 302 Washington Avenue, S.W., Roanoke, Virginia 24016-4312, enclosing a copy of the application and Declaration for execution by Dr. Dorn. Exhibit 3.

7. On July 16, 2007, I sent a further letter, via Federal Express, to Mr. Dorn's attorney, David O. Williamson, at the address listed above. Exhibit 4.

8. On or around July 18, 2007, I conducted a telephone call with Mr. Williamson regarding Dr. Dorn's execution of the Declaration, during which time Mr. Williamson suggested that Dr. Dorn did not intend to execute such Declaration.

9. Despite a bona fide attempt to have Dr. Dorn execute and return the executed copy of the Declaration for the above-identified application, including multiple deliveries of the application to Dr. Dorn's attorneys and a follow-up telephone discussion with Dr. Dorn's attorney, Dr. Dorn has not returned the executed Declaration.

6. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be

true; and further that these statements were made with knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 10001 of Title 18 of the United States Code and that such willful and false statements may jeopardize the validity of the application or any patent issued thereon.

Date: 10/31/07

By: A. S. Hullman
Aaron S. Hullman

EXHIBIT 1



1703 South Jefferson St. SW
Suite 400
Roanoke, VA 20416
Main: 540-769-8400
Fax: 540-581-0951

November 14, 2006

VIA OVERNIGHT COURIER

John P. Fishwick, Jr.
LIGHTENSTEIN FISHWICK & JOHNSON PLC
Liberty Trust Building
101 South Jefferson Street, Suite 400
Roanoke, Virginia 24011

Re: Dr. Harry C. Dorn

Dear Mr. Fishwick:

This letter is being provided to you as counsel for Dr. Harry C. Dorn. Please note that we have not copied Dr. Dorn on this letter as we have assumed that you are representing him on all matters pertaining to Luna Innovations Incorporated ("Luna Innovations").

As you may be aware, Dr. Dorn was a co-inventor on at least two inventions during his employment with Luna Innovations. In accordance with the terms of that certain Confidentiality Agreement by and between Dr. Dorn and Luna Innovations dated August 7, 2002, a copy of which is enclosed with this letter, Dr. Dorn agreed to execute and deliver any and all instruments that are, or may be, necessary to document the assignment of such inventions to Luna Innovations for purposes of prosecuting U.S. and foreign patent applications.

To this end, enclosed herewith are six packets of materials for Dr. Dorn signature relating to two series of patent applications filed by Luna Innovations in which Dr. Dorn is a named co-inventor. Each packet of materials includes documents to be reviewed, signed and dated by Dr. Dorn.

Specifically, the first series of patent applications are entitled "Pegylation and Hydroxylation of Trimetallic Nitride Endohedral Metallofullerenes." The three applications in this series are as follows:

(i) U.S. Provisional Application No. 60/556,432 was initially filed on March 26, 2004 and identified Zhongxin Ge, Harry C. Dorn, and J. Paige Phillips as co-inventors. This provisional application packet includes the as-filed application and an Assignment document to be executed by Dr. Dorn.

(ii) International Patent Cooperation Treaty ("PCT") Application No. PCT/US2005/010219 was filed on March 25, 2005 and claims priority to U.S. Provisional Application No. 60/556,432. A copy of the as-filed PCT application is included.

(iii) U.S. National Stage Patent Application No. 10/594,432 was filed on September 26, 2006 and claims priority to PCT Application No. PCT/US2005/010219 and U.S. Provisional Application No. 60/556,432. This national stage application packet includes the as-filed application and a Combined Declaration and Power of Attorney document to be executed by Dr. Dorn.

John P. Fishwick, Jr.
November 14, 2006
Page 2

The second series of patent applications are entitled "Polyhydroxy Hydrogensulfated Trimetallic Nitride Endohedral Metallofullerene." This series also has three applications and they are as follows:

(i) U.S. Provisional Application No. 60/556,431 was initially filed on March 26, 2004 and identified Zhongxin Ge and Harry C. Dorn as co-inventors. This provisional application packet includes the as-filed application and an Assignment document to be executed by Dr. Dorn.

(ii) International Patent Cooperation Treaty ("PCT") Application No. PCT/US2005/010220 was filed on March 25, 2005 and claims priority to U.S. Provisional Application No. 60/556,431. A copy of the as-filed PCT application is included.

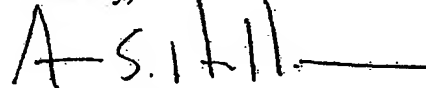
(iii) U.S. National Stage Patent Application No. 10/594,429 was filed on September 26, 2006 and claims priority to PCT Application No. PCT/US2005/010219 and U.S. Provisional Application No. 60/556,431. This national stage application packet includes the as-filed application and a Combined Declaration and Power of Attorney document to be executed by Dr. Dorn.

Please have Dr. Dorn sign and date each of the above-mentioned Assignment and Combined Declaration and Power of Attorney documents. Thereafter, please return the originally executed documents to my attention at 1703 South Jefferson Street, SW, Suite 400, Roanoke, VA 24016 so that we can arrange to have each document filed with the U.S. Patent and Trademark Office.

Additionally, kindly acknowledge receipt of this letter and its enclosures by signing, dating, and returning the attached copy of this letter.

If you have any questions, please do not hesitate to contact me at 540.808.9950.

Sincerely,



Aaron S. Hullman
Vice President and General Counsel

Enclosures

cc: Susan M. Dadio, Esq., Buchanan Ingersoll & Rooney PC
Robert S. Ballou, Esq., Johnson, Ayers & Matthews, P.L.C.

RECEIPT ACKNOWLEDGED:

By: _____

Date: _____

EXHIBIT 2

John P. Fishwick, Jr.
Telephone: 540-345-5890
Facsimile: 540-345-5789
jpf@vaonline.com

**LICHTENSTEIN
FISHWICK &
JOHNSON** PLC
ATTORNEYS & COUNSELORS AT LAW

Liberty Trust Building
101 S. Jefferson St., Suite 400
Roanoke, VA 24011

P.O. Box 601
Roanoke, VA 24004-0601

January 8, 2007

Aaron S. Hullman, Esq.
Luna Innovations, Inc.
1703 South Jefferson Street, SW
Suite 400
Roanoke, VA 24016

RE: Dr. Harry C. Dorn

Dear Aaron:

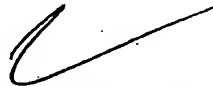
We are in receipt of and thank you for your letter requesting Dr. Dorn's signature on six patent applications. We write to inform you that David Williamson is handling these matters for Dr. Dorn and we have forwarded to him your letter and the enclosures. In the future, please direct all correspondence regarding this matter to David Williamson.

Thank you for your attention to this matter.

With kind regards, I remain

Very truly yours,

LICHTENSTEIN FISHWICK & JOHNSON, P.L.C.



John P. Fishwick, Jr.

JPF/mpp

cc: David O. Williamson
Dr. Harry C. Dorn

EXHIBIT 3



VIA CERTIFIED MAIL

May 11, 2007

1703 South Jefferson St., SW
Suite 400
Roanoke, VA 24016
Main: 1.540.769.8400
Fax: 1.540.769.8401
www.lunainnovations.com

DAVID O. WILLIAMSON, ATTORNEY
302 Washington Avenue, S.W.
Roanoke, Virginia 24016-4312
540.344.7600

Re: Dr. Harry C. Dorn

Dear Mr. Williamson:

Pursuant to the January 8, 2007 letter from John P. Fishwick, Jr. indicating your handling of this matter, this letter is being provided to you as counsel for Dr. Harry C. Dorn.

Enclosed herewith are six packets of materials for Dr. Dorn relating to two series patent applications filed by Luna Innovations Incorporated in which Dr. Dorn is a named co-inventor. Each packet of materials includes documents to be carefully reviewed, signed and dated by Dr. Dorn.

Specifically, the first series of patent applications are entitled "Pegylation and Hydroxylation of Trimetallic Nitride Endohedral Metallofullerenes." The three applications in this series are as follows:

(i) U.S. Provisional Application No. 60/556,432 was initially filed on March 26, 2004 and identified Zhongxin Ge, Harry C. Dorn, and J. Paige Phillips as co-inventors. This provisional application packet includes the as-filed application and an Assignment document to be executed by Dr. Dorn.

(ii) International Patent Cooperation Treaty ("PCT") Application No. PCT/US2005/010219 was filed on March 25, 2005 and claims priority to U.S. Provisional Application No. 60/556,432. A copy of the as-filed PCT application is included.

(iii) U.S. National Stage Patent Application No. 10/594,432 was filed on September 26, 2006 and claims priority to PCT Application No. PCT/US2005/010219 and U.S. Provisional Application No. 60/556,432. This national stage application packet includes the as-filed application and a Combined Declaration and Power of Attorney document to be executed by Dr. Dorn.

The second series of patent applications are entitled "Polyhydroxy Hydrogensulfated Trimetallic Nitride Endohedral Metallofullerenes." This series also has three applications and they are as follows:

David O. Williamson
May 10, 2007
Page 2

(i) U.S. Provisional Application No. 60/556,431 was initially filed on March 26, 2004 and identified Zhongxin Ge and Harry C. Dorn as co-inventors. This provisional application packet includes the as-filed application and an Assignment document to be executed by Dr. Dorn.

(ii) International Patent Cooperation Treaty ("PCT") Application No. PCT/US2005/010220 was filed on March 25, 2005 and claims priority to U.S. Provisional Application No. 60/556,431. A copy of the as-filed PCT application is included.

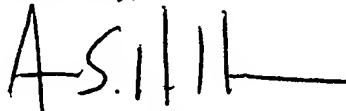
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Please have Dr. Dorn sign and date each of the above-mentioned Assignment and Combined Declaration and Power of Attorney documents. Thereafter, please return the originally executed documents to us so that we can have each document filed with the U.S. Patent and Trademark Office.

Additionally, kindly acknowledge receipt of this letter and its enclosures by signing, dating, and returning the attached copy of this letter.

If you have any questions, please do not hesitate to contact me.

Sincerely,



Aaron S. Hullman
Vice President and General Counsel

Enclosures

cc: Susan M. Dadio, Esq., BUCHANAN INGERSOLL & ROONEY PC
Robert S. Ballou, Esq., JOHNSON, AYERS & MATTHEWS, P.L.C.

RECEIPT ACKNOWLEDGED:

By: _____

Date: _____

EXHIBIT 4



1703 South Jefferson St., SW
Suite 400
Roanoke, VA 24016
Main: 1.540.769.8400
Fax: 1.540.769.8401
www.lunainnovations.com

July 16, 2007

VIA E-MAIL AND FEDERAL EXPRESS

David O. Williamson, Esq.
302 Washington Avenue, S.W.
Roanoke, Virginia 24016-4312

Re: Dr. Harry C. Dorn Invention Assignment Documentation

Dear Mr. Williamson:

This letter is being provided to you as counsel for Dr. Harry C. Dorn. By letter dated May 11, 2007, we previously provided you and your client, Dr. Dorn, six packets of materials for Dr. Dorn relating to two series patent applications filed by Luna Innovations Incorporated in which Dr. Dorn is a named co-inventor. Each packet of materials included documents to be carefully reviewed, signed and dated by Dr. Dorn.

Please acknowledge in writing whether or not Dr. Dorn intends to sign and date each of the above-mentioned Assignment and Combined Declaration and Power of Attorney documents.

If Dr. Dorn intends to comply with his contractual obligations to cooperate in the prosecution of these patent applications, in accordance with his employment and consulting agreements, please have Dr. Dorn return the originally executed documents to us immediately so that we can have each document filed with the U.S. Patent and Trademark Office.

If you have any questions, please do not hesitate to contact me or our outside counsel, Ms. Susan Dadio, at Buchanan Ingersoll & Rooney PC. Ms. Dadio is handling these patent applications on behalf of Luna Innovations and she may be reached by phone at 703.838.6531 or by e-mail at susan.dadio@bipc.com.

Sincerely,

Aaron S. Hullman
Vice President and General Counsel

cc: Dr. Harry Dorn
Susan M. Dadio, Esq., Buchanan Ingersoll & Rooney PC
Robert S. Ballou, Johnson Ayers & Mathews, P.L.C.



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of)	
Zhongxin GE et al.)	Group Art Unit: Unassigned
Application No.: 10/594,432)	Examiner: Unassigned
Filed: September 26, 2006)	Confirmation No.: Unassigned
For: PEGYLATION AND)	
HYDROXYLATION OF)	
TRIMETALLIC NITRIDE)	
ENDOHEDRAL)	
METALLOFULLERENES)	

SECOND STATEMENT OF FACTS UNDER 37 C.F.R. §1.47(a)

Mail Stop Missing Parts
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

I, Aaron S. Hullman, hereby declare as follows:

1. I am the same individual who, on October 31, 2007, signed a Statement of Facts Under 37 C.F.R. §1.47(a) in connection with the above-captioned application ("First Statement of Facts").
2. In addition to the information provided in the First Statement of Facts, attached hereto as Exhibit A is the confirmation of receipt for the certified letter sent to Dr. Dorn's counsel, David O. Williamson, Esq., on May 11, 2007 (see Exhibit 3 to the First Statement of Facts). Also, attached hereto as Exhibit B is the confirmation of receipt for the letter sent, via Federal Express, to Mr. Williamson on July 16, 2007 (see Exhibit 4 to the First Statement of Facts).
3. David O. Williamson, Esq. represents Dr. Harry C. Dorn regarding various matters involving Luna Innovations Incorporated, including intellectual property matters with respect to the above-captioned application.

4. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 10001 of Title 18 of the United States Code and that such willful and false statements may jeopardize the validity of the application or any patent issued thereon.

Date: 12/27/07

By: A.S. Hullman
Aaron S. Hullman

EXHIBIT A

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Search Results

Label/Receipt Number: 7005 3110 0002 8511 5414

Detailed Results:

- Delivered, May 14, 2007, 11:18 am, ROANOKE, VA 24016
- Acceptance, May 11, 2007, 10:47 am, ROANOKE, VA 24014

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Total Postage & Fees	\$ 8.45	05/11/2007
Sent David O. Williamson, Attorney Street or P.O. 302 Washington Avenue, SW City Roanoke, VA 24016-4312		
PS Form 3800, June 2002 See Reverse for Instructions		


SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 		A. Signature x <i>Carsten Halli</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
1. Article Addressed to:  David O. Williamson, Attorney 302 Washington Avenue, SW Roanoke, VA 24016-4312		B. Received by (Printed Name) C. Date of Delivery _____ 5-14-07	
2. Article Number (Transfer from service label) 7005 3110 0002 8511 5414		D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below: _____	
3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
PS Form 3811, February 2004		Domestic Return Receipt 102595-02-4-1540	

EXHIBIT B

JP

From: Origin ID: ROAA (540)769-8436
Amy Combs
Luna Innovations Incorporated
1703 South Jefferson Street
Suite 400
Roanoke, VA 24016



CL85336672 1021

SHIP TO: (540)344-7600 BILL SENDER
David O. Williamson, Esq.

302 Washington Avenue, SW

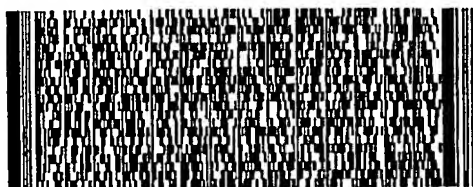
Roanoke, VA 240164312

Ship Date: 17JUL07
Act Wgt: 1 LB
System#: 1762799/INET7061
Account#: S *****

Delivery Address Bar Code



Ref # 7385-180
Invoice #
PO #
Dept #

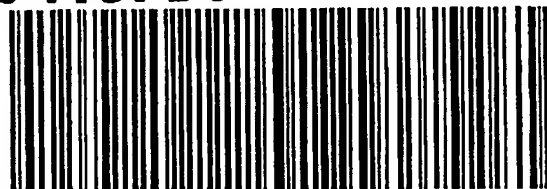


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Amy Combs

From: TrackingUpdates@fedex.com
Sent: Wednesday, July 18, 2007 11:26 AM
To: Amy Combs
Subject: FedEx Shipment 791723476640 Delivered

This tracking update has been requested by:

Company Name: Luna Innovations Incorporated

Name: Amy Combs

E-mail: combsa@lunainnovations.com

Our records indicate that the following shipment has been delivered:

Tracking number:	791723476640
Reference:	7365-160
Ship (P/U) date:	Jul 17, 2007
Delivery date:	Jul 18, 2007 11:18 AM
Sign for by:	K.GREER
Delivered to:	Receptionist/Front Desk
Service type:	FedEx Standard Overnight
Packaging type:	FedEx Envelope
Number of pieces:	1
Weight:	0.50 lb.

Shipper Information
Amy Combs
Luna Innovations Incorporated
1703 South Jefferson Street
Suite 400
Roanoke
VA
US
24016

Recipient Information
David O. Williamson, Esq.
302 Washington Avenue, SW
Roanoke
VA
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240164312

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7/18/2007

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